

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**CHARLES McMANUS,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO.: 2:05cv117**

**GARY BASS and  
DUNCAN MILLS,**

**Defendants.**

**FINAL ORDER**

Charles McManus (“Plaintiff”), a Virginia inmate, brings this pro se action pursuant to 42 U.S.C. § 1983, against Gary Bass and Duncan Mills (“Defendants”), to redress alleged violations of his rights under the Religious Land Use and Institutionalized Person’s Act (“RLUIPA”), 42 U.S.C. § 2000cc et seq., and under the Free Exercise Clause of the First Amendment. Specifically, Plaintiff claims that he has been denied a kosher (“Common Fare”) diet as required by his religious faith. Plaintiff seeks both monetary and injunctive relief.

On July 6, 2005, Defendants filed a Motion for Summary Judgment, and on July 26, 2005, Plaintiff filed a Cross-Motion for Summary Judgment. (Docs. 12, 19.) On March 22, 2006, the Court denied Plaintiff’s Motion for Summary Judgment and granted Defendants’ Motion for Summary Judgment on the issue of monetary damages, leaving the issue of injunctive relief pending. See Court’s Order and Opinion, dated March 22, 2006. (Doc. 27.) The Court ordered Defendants to advise the Court within thirty (30) days of the entry the Court’s Order and Opinion whether Defendants had placed Plaintiff on the Common Fare diet. Id. On April 18,

2006, Defendants filed their Response to the Court's Order, informing the Court that Defendants had not placed Plaintiff on the Common Fare diet. (Doc. 28.)

On April 21, 2006, Plaintiff filed a Notice of Appeal, which the United States Court of Appeals for the Fourth Circuit dismissed as untimely pursuant to the Rule 42(b) of the Federal Rules of Appellate Procedure on May 30, 2006. (Doc. 30.) On April 25, 2006, Plaintiff filed a Motion for "Trial by Jury" on the issue of injunctive relief. On May 8, 2008, Defendants filed an Amended Memorandum Responding to the Court's March 22, 2006 Order, informing the Court that Plaintiff has now been placed on the Common Fare diet [hereinafter "Amended Mem."]. (Doc. 32.) Defendants also submitted the affidavit of Eddie L. Pearson, Warden of Powhatan Correctional Center, who avers that Plaintiff was placed on the Common Fare diet on May 1, 2006. Amended Mem., attachment. Defendants move the Court to dismiss this action on the grounds that the pending claim for injunctive relief is moot. Id. at 1.

In accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was given an opportunity to respond to Defendants' Motion to Dismiss with any material that he wished to offer in rebuttal. (Doc. 13.) Plaintiff was instructed that he must file a response within twenty (20) days, and that failure to submit any materials could result in an adverse judgment based on Defendants' Motion and accompanying affidavit. Id.

Plaintiff has made no response to Defendants' Motion to Dismiss or to their claim that they have now placed him on the Common Fare diet. In light of the undisputed evidence before the Court showing that Plaintiff has now been placed on the Common Fare diet, the issue of injunctive relief is moot. Accordingly, the Court **GRANTS** Defendants Motion to Dismiss, **DENIES** Plaintiff's Motion for a Jury Trial on the Issue of Injunctive Relief as moot, and hereby **DISMISSES** this action.

Plaintiff is advised that he may appeal from this Final Order by forwarding a written

notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. Said written notice must be received by the Clerk within thirty (30) days from the date of this Order. If Plaintiff wishes to proceed in forma pauperis on appeal, the application to proceed in forma pauperis is to be submitted to the Clerk, United States Court of Appeals, Fourth Circuit, 1100 E. Main Street, Richmond, Virginia 23219.

The Clerk is **DIRECTED** to send a copy of this Final Order to Plaintiff and counsel for Defendants.

IT IS SO **ORDERED**.

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/s/  
HENRY COKE MORGAN, JR.  
*UNITED STATES SENIOR DISTRICT JUDGE*

Norfolk, Virginia  
July 20, 2006